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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-351-840]

Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

SUMMARY: On April 11, 2012, the Department of Commerce (the Department) published its preliminary results of the administrative review of the antidumping duty order on certain orange juice (OJ) from Brazil. This review covers four producers/exporters of the subject merchandise to the United States. The period of review (POR) is March 1, 2010, through February 28, 2011.

After analyzing the comments received, we have made certain changes in the margin calculations. Therefore, these final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled “Final Results of Review.”

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6345 or (202) 482-3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 11, 2012, the Department published in the Federal Register the preliminary results of the 2010-2011 administrative review of antidumping duty order on certain OJ from Brazil.¹ Also in April 2012, the Department issued supplemental questionnaires to each of the three respondents in this administrative review (i.e., Fischer S.A. Comercio, Industria, and Agricultura (Fischer), Louis Dreyfus Commodities Agroindustrial S.A. (Louis Dreyfus), and Sucocitrnico Cutrale, S.A. (Cutrale)). We received responses to these supplemental questionnaires in the same month.

We invited parties to comment on our preliminary results of review. In May 2012, we received case briefs from the petitioners (i.e., Florida Citrus Mutual and Citrus World Inc.), Cutrale, Fischer, and Louis Dreyfus. We received rebuttal briefs from the petitioners. On July 20, 2012, the Department extended the final results in the current review to no later than October 9, 2012. See the Memorandum to Christian Marsh, Deputy Assistant Secretary, AD/CVD Operations, from Blaine Wiltse, Senior Trade Analyst, Office 2, AD/CVD Operations, entitled, “Certain Orange Juice from Brazil: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated July 20, 2012.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

¹ See Certain Orange Juice from Brazil: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination, 77 FR 21724 (Apr. 11, 2012) (Preliminary Results).

Scope of the Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for manufacture (FCOJM); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as not-from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil, 52 FR 16426 (May 5, 1987). Therefore, the scope of this order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Coinbra Frutesp S.A. (Coinbra Frutesp),² Cutrale, Fischer, and Montecitrus Trading S.A. (Montecitrus).

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42 Brix, in a frozen state, packed in retail-sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States

² As discussed below, we find that Louis Dreyfus is the successor-in-interest to Coinbra Frutesp. See the “Successor-in Interest” section of this notice.

(HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of the order is dispositive.

Period of Review

The POR is March 1, 2010, through February 28, 2011.

Successor-in-Interest

As noted in the Preliminary Results, in its request for a review, Louis Dreyfus claimed that it is the successor-in-interest to Coinbra Frutesp and its wholly-owned subsidiary Coinbra Frutesp Agroindustrial Ltda. (Coinbra Frutesp Ag.), a producer of subject merchandise in Brazil. Based on Louis Dreyfus' submissions addressing the four factors with respect to this change in corporate structure (*i.e.*, management, production facilities for the subject merchandise, supplier relationships, and customer base),³ in the preliminary results we preliminarily found that Coinbra Frutesp Ag.'s organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. Further, we found that Louis Dreyfus operates as the same business entity as Coinbra Frutesp Ag. with respect to the production and sale of OJ. Therefore, we preliminarily determined that Louis Dreyfus is the successor-in-interest to Coinbra Frutesp. See Preliminary Results, 77 FR at 21726.

Since the preliminary results, no party to this proceeding has commented on this issue, and we have received no new information with respect to this issue. As a result, we continue to find that Louis Dreyfus is the successor-in-interest to Coinbra Frutesp.

³ See Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada, 70 FR 50299, 50300-01 (Aug. 26, 2005) (setting forth the four factors to be considered for successorship determinations), unchanged in Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada, 70 FR 59721 (Oct. 13, 2005).

Determination of No Shipments

As noted in the Preliminary Results, we received a no-shipment claim from Montecitrus, named in the notice of initiation of this review, and we confirmed its claim with U.S. Customs and Border Protection (CBP). Because we find that the record indicates that Montecitrus did not export subject merchandise to the United States during the POR, we determine that it had no reviewable transactions during the POR.

As we stated in the Preliminary Results, our former practice concerning respondents submitting timely no-shipment certifications was to rescind the administrative review with respect to those companies if we were able to confirm the no-shipment certifications through a no-shipment inquiry with CBP. See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27393 (May 19, 1997); see also Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results of Antidumping Duty Administrative Review, 75 FR 76700, 76701 (Dec. 9, 2010). As a result, in such circumstances, we normally instructed CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, clarification of the “automatic assessment” regulation, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (Assessment Policy Notice).

As noted in the Preliminary Results, because “as entered” liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced

by Montecitrus and exported by other parties at the all-others rate. In addition, we continue to find that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to this company and issue appropriate instructions to CBP based on the final results of this administrative review. See the “Assessment Rates” section of this notice below.

Cost of Production

As discussed in the preliminary results, we conducted an investigation to determine whether Cutrale, Fischer, and Louis Dreyfus made home market sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b) of the Act. See Preliminary Results, 77 FR at 21731. For these final results, we performed the cost test following the same methodology as in the Preliminary Results, except that we used the COP database accompanying Fischer’s April 2012 response in our calculations for Fischer. For further discussion, see the Issues and Decision Memorandum (Decision Memo), accompanying this notice, at Comment 9.

We found 20 percent or more of each respondent’s sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in “substantial quantities” within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. See sections 773(b)(1) and (2) of the Act.

For purposes of these final results, we continue to find that Cutrale, Fischer, and Louis Dreyfus made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales (if any) as the basis for

determining normal value (NV), pursuant to section 773(b)(1) of the Act. Where there were no home market sales made in the ordinary course of trade, we based NV on constructed value.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this administrative review are addressed in the Decision Memo, dated concurrently with, and hereby adopted by, this notice. A list of the issues addressed in the Decision Memo is appended to this notice. The Decision Memo is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (IA ACCESS). Access to IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit of the main Commerce Building, room 7046. In addition, a complete version of the Decision Memo is also accessible on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and the electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes to the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period March 1, 2010, through February 28, 2011:

<u>Manufacturer/Exporter</u>	<u>Percent Margin</u>
Sucocitricon Cutrale, S.A.	2.63
Fischer S.A. Comercio, Industria, and Agricultura	4.72
Louis Dreyfus Commodities Agroindustrial S.A.	20.34
Montecitrus Trading S.A.	*

/*/ No shipments or sales subject to this review.

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

We have calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate is above de minimis (i.e., less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its “automatic assessment” regulation on May 6, 2003. See Assessment Policy Notice, 68 FR 23954. This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than-fair-value investigation if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

In April 2012, the International Trade Commission (ITC) determined, pursuant to section 751(c) of the Act, that revocation of this order would not be likely to lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Certain Orange Juice From Brazil, 77 FR 22343 (Apr. 13, 2012). See also USITC Publication 4311 (April 2012), titled Certain Orange Juice from Brazil

(Inv. No. 731-TA-1089). As a result of the ITC's negative determination, the Department revoked the order on OJ from Brazil on April 20, 2012, effective as of March 9, 2012 (i.e., the fifth anniversary of the date of publication in the Federal Register of the antidumping duty order). See Revocation of Antidumping Duty Order: Certain Orange Juice From Brazil, 77 FR 23659 (Apr. 20, 2012). Consequently, the collection of cash deposits of antidumping duties on entries of the subject merchandise is no longer required.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

_October 9, 2012_____

(Date)

Appendix – Issues in Decision Memorandum

General Issues

1. Offsetting of Negative Margins
2. Treatment of By-Product Revenue in the Calculation of General and Administrative and Financial Expenses

Cutrale Issues

3. Constructed Export Price Offset for Cutrale
4. Use of Actual Brix to Calculate the Prices and Quantities for Cutrale's Home Market Sales
5. Inventory Carrying Costs for Cutrale's U.S. Sales
6. Capping of Certain Revenues Received by Cutrale by the Amount of Reported Expenses
7. Cutrale's Biological Assets

Fischer Issues

8. Calculation of Fischer's International Freight Expenses to Include Bunker Fuel
9. Ministerial Errors in Fischer's Cost Calculations
10. Loss on Hedge Operations included in the Calculation of Fischer's Financial Expense Ratio
11. Exclusion of Long-Term Interest Income from the Calculation of Fischer's Financial Expense Ratio

Louis Dreyfus Issues

12. Date of Sale for Louis Dreyfus
13. Classification of Louis Dreyfus' U.S. Sales as CEP Sales
14. Calculation of Louis Dreyfus' Brokerage and Handling Expenses
15. Calculation and Application of Louis Dreyfus' U.S. Indirect Selling Expense Ratio
16. Use of Partial Adverse Facts Available for Louis Dreyfus' U.S. Indirect Selling Expenses and Inventory Carrying Costs